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*Submitted Via Electronic Filing*

July 5, 2017

The Honorable Ajit Pai  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

RE: Notice of Ex Parte Presentation Concerning the Telephone Consumer Protection Act

Dear Chairman Pai:

On Wednesday, June 28, 2017, several credit union representatives met with the Federal Communications Commission (FCC) to discuss the Telephone Consumer Protection Act's (TCPA) impact on the ability of credit unions to serve consumers. The meeting included Scott Everett, Vice President and General Counsel, Wright-Patt Credit Union, Patrick Harris, Vice President, Ohio Credit Union League, Miriah Lee, Manager Policy Impact, Ohio Credit Union League, and Leah Dempsey, Senior Director of Advocacy and Counsel at Credit Union National Association, and Zenji Nakazawa, Public Safety and Consumer Protection Advisor at the FCC.

### **The TCPA is Impeding Consumer Friendly Communications with Credit Union Members**

During the meeting, Mr. Everett from Wright-Patt Credit Union ("WPCU") detailed the impact that the outdated TCPA and unclear FCC interpretations are having on his credit union's ability to communicate with members. Like all credit unions, WPCU is a not-for-profit institution owned by the more than 325,000 members they serve and is established for the purpose to promote thrift and provide access to credit to members for provident purposes. In short, when WPCU is communicating with its members, it is seeking to connect with the same people who own the credit union and who have the opportunity to vote for setting credit union policies. As such, inherently there is no reason why a credit union would be communicating with its members in an offensive or annoying way.

Alternatively, as Mr. Everett outlined in the discussion, credit union members overwhelmingly expect and deserve timely communications regarding their accounts. A significant percentage of the membership utilizes cell phones as their primary method of contact. It is imperative that credit unions have an unfettered ability to provide time sensitive information via cell phone calls and text messages. Mr. Everett noted that the current regulatory framework inhibits credit unions from delivering material information to member-owners, ranging from fraud alerts to past due

payment notices to opportunities for lower borrowing rates on various financial products. While WPCU endeavors to serve members in compliance with consumer protection regulations, the TCPA requirements are not feasible to satisfy and simultaneously deliver the level of timely service members require. The result is less communication which prevents members from making informed decisions regarding their financial well-being.

### **Conflicting Regulatory Guidance Harms Consumers**

During the discussion, the credit union representatives also reiterated concerns that conflicting guidance from financial regulators about how credit unions should be in communication with consumers has caused confusion about how they can comply with the totality of regulations governing such communications. It was noted that the average staff size of a credit union is eight employees, and as such, it could be extremely burdensome for these smaller financial institutions to have the resources to understand and decipher how to comply with conflicting regulations. Credit unions are already answering to their prudential regulator, the National Credit Union Administration, who supervises them and regularly examines them for safety and soundness. Furthermore, credit unions that have more than \$10 billion in assets are also supervised and examined by the Consumer Financial Protection Bureau (CFPB), and the CFPB has rulemaking and enforcement authority over numerous consumer protection laws to which all credit unions are subject.

When other federal regulators have encouraged communications with consumers that conflict with FCC interpretations, this puts credit unions in the position of having to either risk aggravating financial regulators or risk facing liability for TCPA violations. Below are a few examples of conflicting guidance:

- The CFPB's "Early Intervention Rule," which requires institutions to establish live contact or make a good faith effort to establish live contact with customers within 36 days after a mortgage loan becomes delinquent;
- Fannie Mae's "Quality Right Party Contact," which is a standard that establishes a code of conduct for interactions with customers with delinquent debt that includes a requirement to establish a rapport with those customers and open an ongoing dialogue to attempt to resolve the delinquency in a positive manner. Fannie Mae also requires sending the consumer a foreclosure prevention package and then making follow-up calls to the consumer at least every 3 days until resolution of the issue; and
- The Home Affordable Modification Program, which requires that institutions "proactively solicit" customers for inclusion in the program by making a minimum of four telephone calls to the customer at different times of day.<sup>1</sup>

The CFPB is encouraging timely and frequent communications to contact consumers to protect their financial stability, while the FCC is creating policies subjecting them to liability for doing this. Conflicting guidance about how credit unions should be communicating with their members is extremely problematic. It creates the possibility that consumers may not be able to receive the important updates they need about their financial situation if the liability is too great of a risk for

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<sup>1</sup> Wells Fargo Ex Parte CG Docket No. 02-278 January 26, 2015, exhibit 3.

credit unions. And, it puts the resources of the credit union as a whole at risk since the costly class action litigation from a technical TCPA violation means money is coming out of the pockets of member-owners to pay for legal fees and the strict liability damages associated with this statute. As Mr. Everett noted, even if a credit union settles or wins a lawsuit on a motion, the resources of the membership have already been pilfered because of the often-significant cost to get to that point in adjudication.

### **The July 2015 TCPA Order Has Made It More Difficult for Credit Unions to Communicate with their Members**

During the meeting, the group also reiterated concerns about the impact the July 2015 TCPA Omnibus Declaratory Ruling and Order is having on credit unions ability to communicate with consumers.<sup>2</sup> CUNA has outlined these concerns in detail in several previous letters to the FCC.<sup>3</sup>

Overall, the credit union representatives urged the FCC to consider the unique size and ownership structure of credit unions and to further consider how the TCPA is harming the ability to engage in consumer-friendly communications with the consumers, who own credit unions. If you have questions concerning our *ex parte* presentation, please feel free to contact me.

Sincerely,

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<sup>2</sup> *In re Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, WC Docket No. 07-135, FCC 15-72 (July 10, 2015).

<sup>3</sup> Letter to Federal Communications Commission In the Matter of Rules and Regulations Implementing the TCPA, available at [https://www.cuna.org/uploadedFiles/CUNA/Legislative\\_And\\_Regulatory\\_Advocacy/Track\\_Regulatory\\_Issues/Pending\\_Regulatory\\_Changes/2016/CUNA%20Comment%20TCPA%20Budget%20Act%20Implementation.pdf](https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Track_Regulatory_Issues/Pending_Regulatory_Changes/2016/CUNA%20Comment%20TCPA%20Budget%20Act%20Implementation.pdf) (June 3, 2016).